

**Industrial Commission's Advisory Committee  
On Workers' Compensation**

**Minutes  
February 8, 2005**

**Members Present:**

Jack Barrett  
Bob Shosted  
John Greenfield  
Senator Andreason  
Dave Gribskov  
Max Sheils

Steve Millard  
Linda Sams  
Dave Whaley  
Keith Hutchinson

**Members Absent:**

Rian Van Leuven  
Willis Norton  
John Tippetts  
Tracy Whigam

**Opening Remarks:**

Chairman John Greenfield announced that Representative Kathie Garrett has agreed to be a special member of the Advisory Committee. The Chairman also reported that Senator Andreason and the Senate Commerce & Human Resources Committee would be attending the Advisory Committee meeting this afternoon.

Chairman Greenfield discussed a letter received from attorney Jon Bauman in response to the Advisory Committee's consensus in favor of S1092 with suggested amendments and consensus opposed to S1093 that IACI brought to the Advisory Committee for review and comment. Mr. Greenfield stated that the Advisory Committee is not a mandatory screening committee as he and others have stated in the past. Jack Barrett reiterated that there is no necessity for anyone to bring proposed legislation to the Advisory Committee, but the Committee would always be willing to review and discuss any proposed legislation if asked.

**Minutes:**

Jack Barrett moved to approve the Minutes of the November 10, 2004, Advisory Committee Meeting. Dave Whaley seconded, and the motion passed.

**Consideration of Issues:**

Proposed Legislation – Michael Kane - Michael Kane, Attorney and Sheriff's Association lobbyist, presented proposed legislation for review and discussion by the Advisory Committee. Mr. Kane introduced Gary Raney Ada County Sheriff and Walt Femling Blaine County Sheriff, who are members of the legislative committee for the Sheriffs'

Association. Mr. Kane discussed the increasing occurrence of "blue suicides" <sup>1</sup> in the state resulting in extremely unusual homicide situations responsible for the rare occurrence of posttraumatic stress disorder (PTSD) suffered by peace officers and jailers. On a recent occurrence, the State Insurance Fund denied payment for a police officer diagnosed and treated for PTSD because under current workers' compensation law mental stress is not compensable. The Sheriff's Association was unaware that this type of disorder is not covered under current law. Therefore, the Sheriff's Association is proposing legislation that would provide benefits under workers' compensation law for peace officers and jailers diagnosed with posttraumatic stress disorders caused by a homicide ruled as justifiable for a period of not more than one year from the date of the homicide.

Several Advisory Committee members and public attendees suggested the possibility of each sheriff's agency purchasing medical disability insurance rather than trying to dramatically change the workers' compensation laws. Concern was raised regarding the one-year limitation from the date of the incident being too restrictive to be beneficial. Public comment indicated that a diagnosis of PTSD many times extends far beyond a year, can last for many years, and at times becomes a permanent disability. Another comment was that mental/mental legislation has been brought before the legislature for firefighters, EMT's, and others, and has been repeatedly rejected by the legislature. The question of constitutionality was also raised, and it was suggested that Mr. Kane research what other states have done regarding the constitutionality of such legislation. There was also a concern on future expansion of the law to include other professions and other psychological disorders to the extent of causing chaos within the system.

The Advisory Committee and public comments indicated the Sheriff's Association might want to research the cost of coverage for mental disorders under medical disability insurance, research case law and the constitutionality of the legislation, and what other states have done regarding mental/mental legislation. Mr. Kane was invited to present any revised proposed legislation to the Advisory Committee for comment, if they so desire.

Update on Other Legislation – Senate Bills S1092 and S1093 mentioned previously, have been approved for printing by the Senate Commerce and Human Resource Committee.

HB 0063 Not for Pecuniary Gain – Commission Director Mindy Montgomery reported that this legislation was drafted by the Commission, due to the recent Supreme Court decision on Kuna Mission Bible Church. An increasing number of businesses are trying to claim exemption under the premise of not being in business for pecuniary gain, to avoid carrying workers' compensation insurance. Ms. Montgomery reported that Idaho is the last state to use the term pecuniary gain in their workers' comp law. The Supreme Court decision has created confusion for employers and could cause more employees to work without the benefit of workers compensation coverage. The Commission proposes

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<sup>1</sup> "Blue suicide" is a term used to describe a suicidal incident whereby the suicidal subject engages in a consciously, life-threatening behavior to the degree that it compels a police officer to respond with deadly force.

removing this language by amending §72-204 and §72-212. Discussion was held and it was decided to modify the language of the proposed bill. After amendments were made, Chairman Greenfield called for consensus. The Committee reached consensus in favor of amended HB0063.

### **Subcommittee Reports:**

#### **Commission Finances**

*(Bob Shosted, Chair, Dave Whaley, Tracy Whigam, John Greenfield (Woody Richards, Ex-Officio)*

Bob Shosted, Chair, reported that the subcommittee was unable obtain the financial information needed in time to draft any proposed legislation this year. Mr. Shosted will schedule a meeting to discuss a possible trigger-effect mechanism on premium taxes to provide adequate ongoing funding of the Industrial Commission for the 2006 legislative session.

#### **Medical Fee Database**

*(Dave Gribskov, Chair, Rian Van Leuven, Dave Whaley, Bob Shosted (Alternate), Alan Conilogue – Staff)*

Dave Gribskov, Chair, reported that the Medical Fee Task Force met with the Commissioners and discussed the Task Force recommendations. Commissioner Limbaugh reported that Senator Goedde is proposing legislation to establish a medical fee schedule. Senator Goedde proposed to the Senate Commerce and Human Resource Committee that the Commission's rules governing medical fee disputes under the workers' compensation law (17.02.08.031 and 032) be repealed. If the repeal passes, the Commission would not have the ability to rule on any medical fee disputes. The unexpected motion was passed by the Senate Committee and will be sent to the House. The Commission will now have to withhold its decision on the recommendations of the Medical Fee Subcommittee/Task Force until results of the proposed legislation is known.

#### **Pubic Comment**

Attorney Woody Richards stated that IACI's concern is that no resolution has been accomplished regarding establishment of a new medical fee schedule. He hopes the Commissioners will be allowed to resolve the medical fee database problem.

#### **Physician Deposition Fees**

*(Keith Hutchinson)*

Keith Hutchinson reported that he is continuing his discussions with other attorneys across the state to determine their experience with physicians overpricing depositions and conferences. When his research is complete, Mr. Hutchinson will draft a letter to the Commission for approval to send to physicians who appear to be charging much higher fees than the majority of physicians within the state for depositions and conferences.

## **Other Issues:**

### **Judicial Rule Change**

Commissioner Kile informed the Advisory Committee that Rule 20, F, 4 of the Judicial Rules of Practice and Procedure has been amended. The amended rule applies to Change of Physician procedures and provides for notification to the Commission when a petition for Change of Physician is denied by the employer.

### **Legislative Presentation to the Senate Commerce and Human Resource Committee**

The Senate Commerce and Human Resource Committee Chairman, Senator Andreason, and members, Senators Werk, Malepeai, Compton, Goedde, and Broadsword joined the Advisory Committee meeting to hear a presentation given by Commissioner Limbaugh on the role and activities of the Industrial Commission and its Advisory Committee. Chairman John Greenfield gave a brief history of the workers' compensation law and the Advisory Committee. Questions and answers were exchanged by Senate members, Advisory Committee members, public attendees, and Industrial Commission staff.

## **Future Meeting:**

The next meeting was scheduled for May 24, 2005, at 9:30 a.m.

Topics for next meeting:

Physician Deposition Fees  
Workers' Compensation Statistics  
Commission Finances